

Principled Negotiation and the Negotiator's Dilemma – is the “Getting to Yes“-approach too “soft”?

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1. Introduction: the basic concepts

The concept of “principled negotiation”, developed by Fisher and Ury in “Getting to Yes”,¹ is one of the most influential approaches (if not the most influential approach) in current negotiation theory. It has received lots of support and some criticism. Most critics claim that the concept of principled negotiation is too “soft”.² The following article tests the justification of this claim. It is based on the thesis that the critics are generally right but that it is easy to integrate these aspects in an even stronger concept of negotiation. This article combines existing approaches into a coherent concept rather than creating a completely new approach. Its goal is to give prescriptive advice to negotiators on how to manage the most important negotiation problems.

The process of negotiation, defined as collective decision-making,³ can be described by two basic attempts: to create and to claim as much value as possible.⁴ Creating value describes the process of increasing the value of the negotiation subject through trade or reframing (“to expand the pie”); claiming value means the attempt to get as much as possible of this value (“to divide the pie”). The tension between creating and claiming value is a central challenge for almost any negotiation. This article tries to develop recommendations for how to manage this tension.⁵

Even purely distributive negotiations like simple selling and buying can create value just because they produce an agreement. If there is a “ZOPA”, a “zone of possible agreements”,

¹ Fisher and Ury (1991)

² “Soft“ shall be defined as too much focus on the integrative aspect and too less focus on the distributive aspect of negotiation. However, Fisher and Ury (1991, 13) use a different definition of soft negotiation.

³ Compare the definition of Fisher and Ury (1991, 1)

⁴ See Lax and Sebenius (1986, 29), the value-creating approach is also called integrative or problem solving, the value-claiming concept is often described as distributive, compare for example Raiffa (1982, 33).

⁵ Allred (2000) offers empirical evidence for the exact same question.

the negotiators leave value on the table, if they do not reach a settlement.⁶ A ZOPA exists if there is room between the “BATNA”, the “best alternatives to negotiated agreements”,⁷ of the negotiators.

The importance of value creation has often been described in negotiation theory. Fisher and Ury use the example of two children fighting for an orange. One child wants to eat the orange; the other needs the skin to bake. With a value-claiming approach, both children want the whole orange. A typical but inefficient solution would be to divide the orange in half and to give a half to each of them. Fisher and Ury recommend distinguishing positions and interests by asking why they want the orange.⁸ This question would double the value on the table because each child could get the whole fruit or the whole skin instead of half of it.⁹ In more general terms, Fisher and Ury characterize their approach as follows: “Behind opposed positions lie shared and compatible interests, as well as conflicting ones. We tend to assume that because the other side’s positions are opposed to ours, their interests must also be opposed. If we have an interest in defending ourselves, then they must want to attack us. In many negotiations, however, a close examination of the underlying interests will reveal the existence of many more interests that are shared or compatible than ones that are opposed.”¹⁰ Principled negotiation is meant to be a synthesis between “hard” and “soft” negotiation. The table from “Getting to yes”¹¹ on the next page illustrates this distinction.

2. Does principled negotiation ignore the distributive aspects of negotiation?

If “soft” negotiation is defined as too much focus on the integrative aspect and too less focus on the distributive part of negotiation, one is easily tempted to say that the approach of “Getting to Yes” is too soft. White makes this point very clear: “...the book’s emphasis upon mutually profitable adjustment, on the “problem solving” aspect of bargaining, is also the book’s weakness. It is a weakness because emphasis of this aspect of bargaining is done to almost total exclusion of the other aspect of bargaining, “distributional bargaining”, where one for me is minus one for you...”¹²

⁶ Raiffa (1982, 33) describes this situation as characterized by “almost opposing interests” because there is a common interest of settlement.

⁷ Compare Fisher and Ury (1991, 99)

⁸ Compare Fisher and Ury (1991, 40 and 44)

⁹ Optimal value creation leads to so called “Pareto-efficient” outcomes, which provide a solution that cannot be improved for one party without decreasing the value for another party.

¹⁰ Fisher and Ury (1991, 43)

¹¹ Fisher and Ury (1991, 13)

¹² White (1984, 115)

There is nothing to say against a focus on the value-creating aspect, but Fisher and Ury seem to claim that one can ignore (or at least pay less attention) to the claiming part. White also uses this argument: “Had the authors stated that they were dividing the negotiation process in two and were dealing with only one part of it, that omission would be excusable. That is not what they have done. Rather they seem to assume that a clever negotiator can make any negotiation into problem solving and thus completely avoid the difficult distribution....To my mind this is naive. By so distorting reality, they detract from their powerful and central thesis.”¹³

Other authors have tried to defend the approach: “...some of the basic principles of “Getting to Yes” are applicable to the distributive or value-claiming aspects of bargaining. For example, the objective of focusing on your BATNA is not to create value but to avoid entering into an agreement that is distributionally less satisfactory than you could obtain elsewhere.”¹⁴

Even though, the point is valid that there is some focus on the value-claiming aspect in principled negotiation, the example just gives advice on how to avoid a bad agreement, not on how to claim value. Therefore, the criticism seems to be justified that principled negotiation is too soft in general because it does not focus enough on the value-claiming aspect. While this is so far just a thesis, the following chapter tries to add some empirical evidence to support it.

3. Principled negotiation and the negotiator’s dilemma

If one defines hard and soft negotiation approaches in terms of the mentioned “Getting to Yes” table (hard meaning insisting on victory and soft meaning insisting on agreement), it is interesting to see how they perform against each other:

1. Hard beats soft because soft accepts all demands to reach an agreement.
2. Hard and hard cannot reach agreement because they do not want to give in.
3. Soft and soft reach a mutual acceptable agreement.

If one assumes that the bad agreement for the soft approach in 1 is worse than no agreement, the structure of the problem is the same as in the famous prisoner’s dilemma game.¹⁵ It describes a situation in which two players have to decide between cooperation and

¹³ White (1984, 116)

¹⁴ Compare Goldberg, Sander and Rogers (1999, 49) and their extensive discussion of the question at hand.

¹⁵ A detailed description of the prisoner’s dilemma game can be found for example in Axelrod (1984, 8)

defection. The best case for each player is to defect while the other party cooperates, the second best is mutual cooperation, the third best mutual defection and the worst case is to cooperate while the other party defects. The “dominant” strategy (the best strategy independent on the move of the other side) is defection because one gets the best instead of the second best or the third best instead of the worst result. However, if both players defect, they just get the third best result instead of the second best for mutual cooperation.

The exact same structure applies to the tension between creating and claiming value:

Best case: I claim the value the other party creates.

Second best case: We both create value

Third best case: We both claim value.

Worst case: The other side claims the value I create.

Therefore, Lax and Sebenius call the tension between creating and claiming value the “negotiator’s dilemma”.¹⁶ Since it is such a basic concept of negotiation and since negotiations play such an important role in life, the salience of this dilemma can hardly be overestimated. The following table shows the structure of the three dilemmas (the prisoner’s dilemma, the negotiator’s dilemma and the dilemma of hard versus soft negotiation) in an overview. There are numeric values attached to each result to quantify the argument.

Table¹⁷

		Row player	Row player
		Cooperate (soft, creating value)	Defect (hard, claiming value)
Column player	Cooperate (soft, creating value)	R = 3, R = 3 Reward for mutual cooperation	S = 0, T = 5 Sucker’s payoff, and temptation to defect
Column player	Defect (hard, claiming value)	T = 5, S = 0 Temptation to defect and sucker’s payoff	P = 1, P = 1 Punishment for mutual defection

The following part of this paper tries to develop prescriptive advice how to manage the tension of these dilemmas with a successful negotiation strategy.

¹⁶ Compare Lax and Sebenius (1986, 158)

The political scientist Axelrod conducted extensive empirical research on the prisoner's dilemma game to explain the evolution and complexity of cooperation.¹⁸ In particular, he organized two computer tournaments of an iterated prisoner's dilemma with the payoff matrix mentioned above. Many complex programs participated and both tournaments ended with a surprise: "Tit-for-Tat", the least complex program, won. Tit-for-Tat starts with a cooperation and mirrors the counterpart's move of the previous round. Therefore, Tit-for-Tat cannot beat any program in a direct competition; the best possible result is a tie. But it is able to generate so much cooperation that it outperformed the other programs in the overall score.

Axelrod analyzes the success of Tit-for-Tat. He finds that successful strategies in the tournaments poses certain characteristics: they are nice (defined as starting with cooperation), not envious (if they lose the direct competition), not too complex, provokable, and willing to forgive previous defections. Strategies, which are not responsive to the previous moves, are called "naïve". They are vulnerable to exploitation (the "sucker" result S) and provoke a strategy of "all defect", which is the best reaction to a naïve strategy because in this case it does not matter that there is more than just one round.

The fact that Tit-for-Tat won both tournaments does not automatically mean that it is the best possible strategy.¹⁹ New research shows that for example the so-called "Pavlov"- strategy is a serious challenger.²⁰ Pavlov follows the strategy "win stay, lose shift" (with T and R as "win" and P and S as "lose"). There are different opinions in the theoretical literature, which one is the better strategy,²¹ but both are good strategies to manage the prisoner's dilemma. Since Tit-for-Tat does not even try to exploit other players (a trait of Pavlov that makes it successful in tournaments but could cause problems like massive retaliation in real negotiations), it seems reasonable to apply the strategy to the negotiator's dilemma.²² This implies starting by creating value and beginning to claim value only after the other side does so.

How does principled negotiation relate to the negotiator's dilemma? Like Tit-for-Tat, it is certainly nice, simple, not envious and forgiving, but hardly provokable. In fact, it seems to be vulnerable to exploitation by strategies like Pavlov. If a principled negotiator creates value

¹⁷ Compare Axelrod (1984, 8)

¹⁸ Compare Axelrod (1984) and (1997)

¹⁹ Axelrod (1997, 21) shows in more complex simulations that in fact some strategies outperform Tit-for-Tat, but he hesitates to call them better strategies because the success heavily depends on the environment.

²⁰ See for example Nowak and Sigmund (1993, 56) or Kraines and Kraines (1995, 56)

²¹ Axelrod (1997, 183) argues still in favor of Tit-for-Tat because he claims that Pavlov is not robust in the long term.

²² Tit-for-Tat might be even more successful in the negotiator's dilemma than in the iterated prisoner's dilemma because most negotiations consist of sequential rather than simultaneous moves, compare Dixit and Nalebuff (1991, 33).

and a Pavlov player claims this value, the latter will continue to do so until the counterpart shifts to claiming tactics. In the theoretical simplification of the prisoner's dilemma, principled negotiation seems to be a naïve "all cooperate" strategy, that did very poorly in the computer tournaments.²³

4. In defense of principled negotiation

The perspective of the negotiator's dilemma on the tension between creating and claiming value is by no means the only possible perspective. There are even arguments for the exact opposite. For example, it can be argued that a hard negotiator will react even harder after a defection, which leads to an escalation of the situation. Likewise, one could be tempted to appease a hard negotiator through cooperation. The prisoner's dilemma is just a theoretical model and there are usually more than the two options of cooperation in reality (at least there is oftentimes a choice between modest and extreme defection).²⁴ The escalation argument illustrates this distinction. For example, in international relations theory there are two competing theories on how to react to defection. Deterrence theory proposes to react to defection by the threat of punishment, which will force the opponent to cooperate, while the so-called "spiral model" warns that such a strategy might even cause an escalation of defections.

In his response to critics, the co-author of "Getting to Yes", Ury, uses aspects of the escalation argument. According to principled negotiation, he asks why people would not cooperate. He mentions four possible reasons:

1. They are afraid.
2. They do not know better.
3. They do not see what is in it for them.
4. They think they can win.²⁵

While the first three reasons seem to be easy to handle with the methods of "Getting to Yes" and "Getting Past No", the fourth reason seems to be the problem. If the other side thinks it is possible to win through defection (the temptation in the prisoner's dilemma), it is difficult to

²³ This is in so far an unfair oversimplification as Fisher and Ury (1991, 7) admit, that "being nice is not an answer", but it clearly points out a potential theoretical weakness of the concept.

²⁴ Even the assumptions of game theory regarding the prisoner's dilemma can be questioned. For example, a philosophy of Kant's categorical imperative would not follow the "dominant" strategy of defection in a single prisoner's dilemma because this strategy could not be the basis of a desirable general law.

find cooperative moves to change the game. Ury recommends to demonstrate one's BATNA, but this just addresses the tension between settlement and no agreement, not the negotiator's dilemma. However, Ury's argument leads to a modification of the recommendation to use a Tit-for-Tat strategy. A slightly softer version of Tit-for-Tat would only claim value after Ury's first three reasons for a previous defection (fear, lack of knowledge and skepticism) are excluded.

Another argument against the application of Tit-for-Tat is mentioned by the other author of "Getting to Yes", Roger Fisher, in his "Note on Tit-for-Tat".²⁶ He explains that an intended cooperation could be misunderstood as a defection and thereby lead at least to irritation or even to mutual punishment.²⁷ Dixit and Nalebuff show why Tit-for-Tat is "too easily provoked" through the following illustration (C, Cooperation, D, Defection):²⁸

Round:		1	2	3	4	5	6	7	8	9	10
Player 1:	C	C	C	C	D	C	D	D	D	D	
				Misper-			Misper-				
				ception			ception				
Player 2:	C	C	C	D	C	D	D	D	D	D	

Evolutionary game theory calls these developments "mutations".²⁹ In the long run, a strategy is the better, the more "robust" it is, i.e. the better it reacts to possible mutations.³⁰ Dixit convincingly proposes as an improvement of Tit-for-Tat to add further cooperative moves in order to avoid the described misperception effect, which adds an additional "soft" element to the recommended strategy.

²⁵ Compare Ury (1991): Getting Past No

²⁶ Compare Fisher (1992)

²⁷ Allred and Mandell (2000) show in this context the dangers of the positive illusion to view oneself as more cooperative than the counterpart views oneself. If Tit-for-Tat is strictly applied, this effect very likely leads to unintended mutual punishments.

²⁸ Dixit and Nalebuff (1991, 107)

²⁹ Wu and Axelrod (1995, 183) investigate the importance of "noise" defined as random errors in implementing a choice.

³⁰ See Axelrod (1997)

5. Conclusion: a recommendation of “conditional principled negotiation“

This article discusses the claim that principled negotiation is too soft. The claim proved to be justified in so far as principled negotiation actually deals too little with the value-claiming part of negotiation. The description of the negotiator’s dilemma showed that this is an important weakness of the concept because it is vulnerable to exploitation, if it is not provokable enough. It has therefore been recommended to apply elements of Tit-for-Tat as a successful strategy in the iterated prisoner’s dilemma to manage the tension between creating and claiming value, i.e. to claim only if the other party did it in the previous move. In defense of principle negotiation it has been argued that misperceptions can lead to unintended defections if a Tit-for-Tat strategy is used. To integrate this argument, it has been recommended to “soften“ Tit-for-Tat through additional cooperative moves and to claim only if previous defections were not due to fear, lack of knowledge or skepticism of the other party.

Lax and Sebenius call their approach to the negotiator’s dilemma (which is very similar to the prescriptive advice for negotiators in this article) “conditional openness“. Since openness is just one of many aspects of value creation and since principled negotiation provides a complete concept of value creation, it makes sense to call this recommendation “conditional principled negotiation“. Such a strategy integrates all the advantages of principled negotiation without being vulnerable to the mentioned criticism. Principled negotiation as described in “Getting to Yes“ and “Getting Past No“ is actually too soft in terms of the negotiator’s dilemma. However, it can be “hardened“ through elements of Tit-for-Tat to become an even more successful strategy of “conditional principled negotiation“.

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